



U.S. DEPARTMENT of STATE

Poland

Country Reports on Human Rights Practices - [2004](#)

Released by the Bureau of Democracy, Human Rights, and Labor

February 28, 2005

Poland is a multiparty democracy with a bicameral parliament. Executive power is shared by the Prime Minister, the Council of Ministers, and, to a lesser extent, the President. Alexander Kwasniewski was reelected President in a 2000 election. The social democratic Democratic Left Alliance (SLD) continued in a minority coalition government with the Union of Labor. The judiciary is independent; however, it was inefficient.

Local police, a national office of investigation, and city guards (uniformed, unarmed officers) maintain internal security. The Minister of Interior oversees the internal security forces. The civilian Minister of Defense has command and control authority over the military chief of the general staff as well as oversight of military intelligence. Civilian authorities maintained effective control of the security forces. There were no reports that security forces committed human rights abuses.

The country continued its transition from a centrally planned to a market economy and had a population of approximately 39 million. The primary sectors of the economy were services, industry and manufacturing, and construction. The gross domestic product growth rate was estimated at 5.7 percent. Wages kept pace with inflation.

The Government generally respected the human rights of its citizens; however, there were problems in some areas. Prison conditions remained generally poor. Lengthy pretrial detention occurred occasionally. The court system was hampered by a cumbersome legal process, poor administration, and an inadequate budget, and court decisions frequently were not implemented. The Government maintained some restrictions in law and in practice on freedom of speech and of the press. Women continued to experience serious discrimination in the labor market and were subject to various legal inequities. Child prostitution was a problem. There were reports of some societal discrimination and violence against ethnic minorities. Some employers violated worker rights, particularly in the growing private sector, and antiunion discrimination persisted. Trafficking in women and children was a problem.

RESPECT FOR HUMAN RIGHTS

Section 1

Respect for the Integrity of the Person Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no politically motivated killings by the Government or its agents; however, in May, police shot two persons in riots that followed a soccer game in Lodz, killing a 19-year-old man and injuring a 23-year-old woman. The police claimed they accidentally used live ammunition instead of rubber bullets to quell the disturbance. Several area police officials resigned as a result of the incident.

In May, the retrial of former Interior Minister Czeslaw Kiszczak for his role in the 1981 killings at the Wujek mine concluded. He was found guilty and sentenced to a 4-year prison sentence, which was later reduced to a 2-year suspended sentence.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices, and there were no reports that government officials employed them.

Prison conditions remained generally poor. Overcrowding and insufficiency of medical treatment were the chief problems in a

prison system that urgently needed additional funding.

In May, prison inmates in Wroclaw and Poznan staged a 3-day hunger strike to protest crowded cells and demand better food and medical care. The protest ended peacefully, but with no resolution of the grievances.

The Ombudsman for Human Rights continued to complain about the safety of prisoners, noting that inmates were often the victims of violent attacks by other prisoners and wardens. The ratio of prisoners to rehabilitation officers was very poor.

Women, who constituted 2 percent of the prison population, were held in 21 detention facilities, 5 of which were only for women. In the remaining 16 facilities, inmates were segregated by gender. Convicted minors (defined as 15- to 17-year-olds) were segregated from the adult prison population. Juveniles (17- to 21-year-olds) accused of serious crimes were usually sent to pretrial detention.

Juveniles were generally separated from adults; however, in accordance with the law, at times juveniles and adults were housed together. According to the Prison Service Central Administration, there were no reported cases of an adult abusing a juvenile in mixed adult-juvenile detention.

The Government permitted prison visits by independent human rights organizations. During the year, the Human Rights Ombudsman monitored 21 detention facilities, and the Helsinki Foundation visited 7 detention centers; some of these visits were unannounced.

d. Arbitrary Arrest or Detention

The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions.

The police force, consisting of 100,000 employees, is a national body with regional and municipal units. While the public generally regarded the police positively, low-level corruption within the police force was considered widespread. Instances of corruption and serious criminal misconduct were investigated by the National Police's office of internal affairs. The personnel division handled minor disciplinary offenses. There was also concern over the extent to which political pressure was brought to bear on the police. In October 2003, national police commander Antoni Kowalczyk resigned after it was revealed that he had changed his testimony during the investigation into the "Starachowice affair," a corruption scandal in which senior officials alerted suspects to an impending raid by the national police's Central Bureau of Investigation. In October, the prosecutor's office in Rzeszow charged Kowalczyk with failing to report the improper release of classified information and with perjury. Two parliamentary officials and a former Deputy Interior Minister were charged with obstructing justice in this affair. Their trial concluded in late December, and a verdict was expected in early 2005.

The law allows a 48-hour detention period before authorities are required to bring a defendant before a court and an additional 24 hours for the court to decide whether to issue a pretrial detention order. Defendants and detainees may consult with attorneys during their detention and before and during court proceedings. Bail was available, and most detainees were released on bail pending trial.

Detainees may be held in pretrial detention for up to 3 months and may challenge the legality of an arrest by appeal to the district court. The court may extend the pretrial detention period every 6 to 12 months, but total detention time before the court issues a first sentence may not exceed 2 years. Under certain circumstances, however, the Supreme Court may extend the 2-year period.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judiciary remained inefficient and lacked resources and public confidence.

There is a four-tiered court and prosecutorial structure. The courts consist of regional, provincial, and appellate divisions, as well as a Supreme Court. These tiers are subdivided further into five parts: Military, civil, criminal, labor, and family. Regional courts try original cases, while appellate courts are charged solely with appeals. Provincial courts have a dual responsibility, handling appeals from regional courts while enjoying original jurisdiction for the most serious offenses. Appellate courts handle appeals tried at the provincial level; the Supreme Court only handles appeals on questions of law. The prosecutorial system mirrors the court structure with national, provincial, appellate, and regional offices. Criminal cases are tried in regional and provincial courts by a panel consisting of a professional judge and two lay assessors. The seriousness of the offense determines which court has original jurisdiction.

Judges are nominated by the National Judicial Council and appointed by the President. They are appointed for life, guaranteed complete immunity from prosecution, and can be reassigned but not dismissed, except by a court decision. The Constitutional Tribunal rules on the constitutionality of legislation. Constitutional Tribunal decisions are final and binding.

The court system remained cumbersome, poorly administered, inadequately staffed, and underfunded. The courts had

numerous inefficiencies--most notably, many districts had more criminal judges than prosecutors--that contributed to a lack of public confidence. Court decisions frequently were not implemented. Bailiffs normally ensured the execution of civil verdicts such as damage payments and evictions; however, they were underpaid, subject to intimidation and bribery, and had a mixed record on implementing decisions. Civil and administrative rulings against public institutions such as hospitals often could not be enforced due to a lack of funds. Simple civil cases took as long as 2 to 3 years to resolve, and the pretrial waiting time in criminal cases could be several months. The long wait for routine court decisions in commercial matters was an incentive for bribery and corruption. The Government implemented administrative measures to alleviate the backlog of cases within the courts, including the hiring of additional court personnel and a new land and property register system. In 2003, there were over 2.1 million cases pending. During the year, the 2003 backlog of pending cases was reduced to less than 1.9 million. In addition to reducing the backlog of cases, average case length was also reduced by 1 month. The continuing backlog and the high cost of legal action deterred many citizens from using the justice system, particularly in civil matters such as divorce. Measures passed by the Sejm in July to streamline the Civil Procedure Code were scheduled to enter into force in February 2005.

The Constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Defendants are presumed innocent until proven guilty. Once a verdict is rendered, the defendant has 7 days to request a written statement of the basis for the judgment. The court then has 7 days to produce a written decision. A defendant has the right to appeal within 14 days of the written decision on the basis of new evidence or procedural irregularities.

Defendants are allowed to consult an attorney, who is provided at public expense if necessary. Defendants must be present during trial and may present evidence and confront witnesses in their defense. Prosecutors can grant witnesses anonymity if they express fear of retribution from the defendant. This provision, designed to help combat organized crime, impairs defendants' right to confront their accusers. Trials are usually public; however, the courts reserve the right to close a trial to the public in some circumstances, including cases of divorce, cases in which state secrets may be disclosed, or cases whose content might offend public morality (see Section 1.f.). The courts rarely invoked this right. A two-level appeal process is available in most civil and criminal matters.

The law allows a defendant and a representative, in addition to the prosecutor, to be present for a provincial appellate court's examination of a verdict.

There were no reports of political prisoners.

The Government has not established a program for restitution or compensation for individual private property seized during the Communist or Nazi eras, although a system addressing the restitution of communal property does exist (see Section 2.c.). The Treasury estimated that there were 56,000 claims outstanding for property valued at approximately \$16.7 billion (50 billion PLN). Despite the lack of a national law, some property nationalized illegally has been restored and compensation provided, amounting to approximately \$183 million (550 million PLN) for 500 property claims over the past 10 years.

Legislation which became effective at the beginning of the year, extinguished the state's obligation to compensate certain claimants for property abandoned as a result of post-World War II border changes. In June, the European Court of Human Rights (ECHR) ruled that this legislation violated a provision of the European Convention on Human Rights dealing with protection of property. The ECHR directed the Government to "secure claimants' property rights through appropriate legal measures and administrative practices" or provide equivalent compensation. The Government estimated that the ruling could affect approximately 80,000 claimants.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the Government did not always respect these prohibitions in practice. The Constitution provides for the general right to privacy; however, there is no legislation that provides for this right.

The law prohibits arbitrary forced entry into homes and requires search warrants issued by a prosecutor for entry into private residences. In emergency cases, when a prosecutor is not immediately available, police may enter a residence with the approval of the local police commander. In the most urgent cases, police may enter a private residence after showing their official identification if there is no time to consult the police commander. There were no reports that police abused search warrant procedures.

The law prohibits the collection of information about a person's ethnic origin, religious convictions, health, political views, or membership in religious, political, or trade union organizations. However, the law allows the release of personal data to carry out the statutory objectives of churches and other religious unions, associations, foundations, and other non-profit-seeking organizations or institutions with a political, scientific, religious, philosophical, or trade-union aim. Other exceptions include provision of information necessary for medical treatment, the establishment of legal claims, and scientific research, so long as the results are not published. All exceptions are subject to some restrictions. In practice, some private organizations have persisted in asking for information such as nationality in questionnaires; although violators are subject to prosecution, there were no known cases during the year.

The law permits police and intelligence services to monitor private correspondence and to use wiretaps and electronic monitoring devices in cases involving serious crimes, narcotics, money laundering, or illegal firearm sales. The Criminal Code

requires the Minister of Justice and the Minister of Interior to authorize these investigative methods. In emergency cases, the police may initiate wiretaps or open private correspondence while simultaneously seeking authorization. Unlike in previous years, there were no reported cases of wiretapping without judicial review or oversight.

There was no independent judicial review of surveillance activities, nor was there any control over the use of the information thus derived. A number of agencies had access to wiretap information, and the Police Code allows electronic surveillance for the prevention of crime and investigations.

Under the law on "lustration," designed to expose officials who collaborated with the Communist-era secret police, persons caught lying about their past may be prohibited from holding public office for 10 years. The law requires officials to provide sworn affidavits concerning their cooperation with the secret police; the public interest spokesman (lustration prosecutor) verifies the affidavits and brings cases of misrepresentation before the lustration court, a special 3-judge panel whose decisions may be appealed.

Many cases were closed to the public because they involved classified documents (see Section 1.e.). Critics continued to voice concern that the vetting procedure may be unfair because secret police records were subject to loss or tampering.

Both men and women are permitted to marry at the age of 18. In certain cases, a court may allow women to marry at age 16 if it is determined to be in the family's best interest.

Section 2

Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights and did not restrict academic freedom; however, there were a few restrictions in law and practice. The Criminal Code states that an individual who "publicly insults or humiliates a constitutional institution" of the country is subject to a fine or imprisonment of up to 2 years, while an individual who insults a public functionary is subject to a fine or imprisonment of up to 1 year. Offending religious sentiment through public speech is punishable by a fine or a 3-year prison term. Individual citizens and businesses may also use the Criminal Code to protect their good name. The independent media were active and expressed a wide variety of views without restriction.

The National Radio and Television Broadcasting Council (KRRiTV) has broad power to monitor and regulate programming on radio and television, allocate broadcasting frequencies and licenses, and apportion subscription revenues to public media. Council members are legally required to suspend their membership in political parties or public associations.

Private television, including satellite and cable services, was available across most of the country. Private television broadcasters operated on frequencies selected by the Ministry of Communications and auctioned by the KRRiTV. Government-owned Polish Television (TVP) (4 channels) was the most widely viewed television, with a 54 percent market share, but had strong competition from the private TVN and Polsat networks. Cable television and various satellite services carried the main national channels, as well as local, regional, and foreign stations, to viewers throughout the country.

Public Radio consisted of four national radio stations and an additional station aimed at foreign audiences. Although not government-owned, Public Radio's supervisory board was nominated by the National Broadcasting Council, consisting of persons nominated by the Sejm, Senate, and the President. Private radio flourished on the local, regional, and national levels alongside public radio. To cut costs, small regional radio stations set up several networks to facilitate advertising and programming.

Books expressing a wide range of political and social viewpoints were widely available, as were periodicals and other publications from abroad.

The law provides for the protection of journalistic sources, except in cases involving national security, murder, and terrorist acts. The law stipulates that programs should not promote activities that are illegal or against state policy, morality, or the common good and requires that all broadcasts, "respect the religious feelings of the audiences and, in particular, respect the Christian system of values." The law also requires public television to provide direct media access to the main state institutions, including the presidency, to make presentations or explanations of public policy. Both public and private radio and television stations provided coverage of all ranges of political opinion.

In May 2003, the Supreme Court ruled in favor of the newspaper Zycie's appeal of a 2003 judgment by a Warsaw district court ordering it to apologize to President Kwasniewski for publishing untrue information. The case was returned to the lower court for further review, and, in September, the Warsaw court again ordered Zycie to apologize. Zycie initiated a new appeal of the September judgment, which was pending at year's end.

The trial of journalist Jerzy Urban for publication of an article in Nie, which criticized the Pope for senility and made other

derogatory remarks shortly before the 2002 Papal visit to Poland, opened in a Warsaw regional court in September.

b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the Government generally respected these rights in practice.

Permits are not necessary for public meetings but are required for public demonstrations; demonstration organizers must obtain permits from local authorities if a demonstration might block a public road. Organizers also are required to inform the local police of the time and place of large demonstrations and their planned route. Every gathering must have a chairperson who is required to open the demonstration, preside over it, and close it. Authorities issued permits for public gatherings on a routine basis.

On three occasions, the mayor of Warsaw refused to issue a permit for a gay rights parade in June, following disturbances during a similar march in Krakow (see Section 5). He justified this denial as necessary to avoid violence but also cited its potential to "offend religious and moral feelings." The governor of Mazowieckie Province overturned the mayor's first two denials, and the mayor's refusal to consider the group's third request for a permit was appealed to the Provincial Administrative Court, which had not ruled on the legality of this action by year's end.

Private associations were required to register with the local district court and obtain government approval to organize. The organization must sign a declaration committing it to abide by the law. In practice, the procedure was complicated and subject to the discretion of the judge in charge. There were no reports that private associations were routinely denied registration, or that any registration was denied for political reasons.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

There are 15 religious groups whose relationships with the State are governed by specific legislation outlining their internal structure, activities, and procedures for property restitution. There are 139 other religious communities. Although the Constitution provides for the separation of church and state, crucifixes hang in both the upper and lower houses of Parliament, as well as in many government offices. State-run radio broadcast Catholic mass on Sundays, and the Catholic Church was authorized to relicense radio and television stations to operate on frequencies assigned to the Church, the only body outside the National Radio and Television Council allowed to do so. Approximately 95 percent of the population was Roman Catholic.

Religious education classes continued to be taught in public schools. The Government employed Catholic Church representatives to teach religious classes in schools, which constituted the vast majority of all religious education. However, parents could request religious classes in any registered religion, including Protestant, Orthodox, and Jewish religions. Non Catholic religious instruction existed but was uncommon. The Ministry of Education paid instructors, including priests, for teaching religion classes. In addition, Catholic Church representatives were included on a commission that determined which books qualified for school use.

Of approximately 10,000 communal property claims filed for restitution of religious property, more than 4,100 have been resolved, and more than 1,200 properties have been returned as of November.

Relations between various religious communities were generally amicable. There were reports of sporadic incidents of harassment and violence against Jews and occasional desecration of Jewish cemeteries, committed by skinheads and other marginal elements of society.

In April, the leader of the Self-Defense Party expressed admiration for Adolf Hitler in an interview, stating that Hitler had a "really good program" which "put Germany on its feet" and eliminated unemployment.

In an April incident in Gdansk, the rector of the St. Brigid Church told parishioners that "Jews killed Jesus and the prophets" and displayed posters asserting that only Christians could be true Poles. The incident was reported in national media as one of a number of improprieties (including financial) associated with this particular cleric.

In June, police in Krakow discovered the desecration of a 19th Century Synagogue. Vandals painted swastikas and a Star of David hanging from gallows on the Tempel Synagogue. The desecration occurred a few days before the opening of an International Festival of Jewish Culture in Krakow's Kazimierz district.

Proceedings were closed in the 2002 cases of desecration of tombstones in Czeladz and in a Jewish cemetery in Wroclaw, with no perpetrators having been found.

The investigation by Katowice authorities into the 2001 anti-Semitic, anti-European Union (EU) demonstration by approximately 400 Polish ultranationalists was also closed without identifying a culpable party.

In March, acting under the Religious Communal Property Restitution law, the town of Slubice transferred ownership to the Jewish community of the final portion of the Slubice Jewish Cemetery, which was partially destroyed during the Second World War and was later the site of a communist-built bus station and hotel. Most of the cemetery was transferred to the Jewish community in 2002.

The Government provided grants to a number of organizations involved in anti-bias education, including the public-private Jewish Historical Institute (ZIH) in Warsaw. ZIH is the largest depository of Jewish-related archival documents, books, journals, and museum objects in the country. The Government also provided grants to the Jewish Historical Association, which produces educational materials on Jewish culture, the Holocaust and religious tolerance, and to other non-governmental organizations.

The Institute of National Remembrance – Commission for the Prosecution of Crimes against the Polish Nation (IPN) was created by Act of the Sejm in December 1998. IPN is under the direction of a president, who acts independently of Government control, and is elected for a 5-year term. One of the three principal departments of IPN is the Public Education Office, which produces materials for schools, teachers and students. The office also holds competitions and sponsors exhibitions on historical themes, as well as supporting workshops, seminars and other activities. Educational materials included a major research and documentation project on "The Extermination of Jews in Poland" during the Second World War. This project included a critical review of Polish attitudes towards the Jewish population during the war, and instances of collaboration with the Nazis, as well as activities undertaken by underground organizations and individuals to rescue Jews.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice. The Constitution prohibits forced exile, and the Government did not employ it.

The law provides for the granting of refugee and asylee status to persons in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. In practice, the Government provided protection against refoulement, the return of persons to a country where they fear persecution, and granted asylum and refugee status. Persons recognized as refugees under the Convention are granted permission to remain in the country permanently. The Government cooperated with the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees and asylum seekers.

The law provides all prospective refugees access to a procedure for adjudicating refugee status. Prospective refugees may appeal negative status decisions by the Ministry of Internal Affairs to an independent board. The Bureau of Repatriation and Aliens (BRA) controlled the various refugee centers and agencies and had some political control over the border guards.

The BRA has 6 months in which to render a decision on an application for refugee status. An alien may appeal the denial of a petition to the BRA's refugee board within 2 weeks of delivery of the initial decision. If the board finds a claim to be "manifestly unfounded," the alien may file an appeal within three days of the initial finding. The BRA refugee board's decisions may be appealed in administrative courts. While the law calls for a decision granting or denying asylum to be rendered within 6 months from the date of the initiation of the procedure, the average application processing time was 8 months, with some cases taking as long as 18 months. The length of processing time left applicants living in legal limbo, unable to work legally, while awaiting decisions on their cases. The BRA reported that 8,078 persons applied for refugee status during the year. Approximately 3.5 percent of applicants were granted refugee status.

There were no reports of harassment of refugee camp inhabitants by local residents or mistreatment of refugees by police.

There continued to be reports during the year that large numbers of refugees or asylum applicants left the country or abandoned the procedure. For example, approximately three-quarters of Chechen refugees left the country before their status was adjudicated. There was no accurate way of determining how many refugees had abandoned the process and either left the country or remained in the country illegally. Although the Border Guards maintained a computer system to track the status of asylum applicants, many asylum-seekers did not provide the Border Guards with updated contact information when they moved.

Section 3

Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. Citizens 18 years of age and older have the right to vote and cast secret ballots, and voting is voluntary. Multiple candidates from various political parties participated in the elections and had access to the media. In May, the country was admitted to the EU and participated in June elections for the European Parliament. Average voter turnout was 22 percent. The most recent national elections took place in 2001. Average voter turnout for these parliamentary elections was 46.3 percent. The elections were regarded as free and fair. Only minor irregularities (for example, registering of hospital patients, ballot boxes too small to hold the number of ballots cast) were reported.

There was widespread public perception of corruption in government. Citizens considered political parties, parliament, the health care system, and the judiciary to be the most corrupt public institutions, according to a Gallup Institute poll commissioned by Transparency International.

Corruption in government continued to be a primary focus of Polish media, with the "Rywingate" and "Orlengate" scandals predominating. Both were the focus of parliamentary investigations, as well as criminal investigations by federal prosecutors' offices. Rywingate centered on accusations that noted film producer Lew Rywin, acting as an agent for then-Premier Leszek Miller's SLD, sought a \$17.5 million bribe in July 2002 from the publisher of a major Polish daily newspaper. The purpose of the bribe was reportedly to secure changes to a media bill that would have benefited the publisher. In April, Rywin was sentenced to 2½ years in prison for his role in the scheme. The sentence was reduced to 2 years in December, when the court determined that Rywin was acting as an agent, and not alone.

The Orlengate scandal surfaced in October, when notes obtained from the Government's security service indicated that the country's richest businessman had a meeting with a former Russian spy, in which he suggested he had official approval to negotiate the sale of state-owned Rafineria Gdanska, the country's second-largest oil refinery. The alleged conversation would have been illegal, since Poland's corruption law bars any state officials, with the exception of Treasury Ministry officials, from negotiating business transactions, including asset sales, on the government's behalf. Parliamentary and criminal investigations were ongoing at year's end.

Public access to government information is provided for in the Constitution and in the Law on Access to Public Information; and in practice, the Government provided such access for citizens and non-citizens, including foreign media. Refusals of requests for information must be based on exceptions provided in the law related to government secrets, personal privacy restrictions and propriety business data. Refusals may be appealed.

There were 99 women in the 460-seat Sejm and 21 women in the 100-seat Senate. There was one woman in the 17-member Cabinet.

There were 2 members of minorities in the 460-seat Sejm and no minorities in the 100-seat Senate. There were no minorities in the 17-member Cabinet.

The electoral law exempts ethnic minority parties from the requirement that they win 5 percent of the vote nationwide to qualify for seats in individual districts.

Section 4

Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

As provided in the Constitution, the Human Rights Ombudsman presents an annual report to the Sejm and Senate on his or her activities and the state of human and civic freedom and rights in the country. The most recent report, presented in July, noted that 55,000 cases were filed with the office in 2003, an increase of more than 3,000 from the prior year. The report also recommended a number of changes in government and civic institutions. These included the need for legislative reform; increased transparency in government; more evenhanded and consistent administration of public programs; reduction of delays in the judicial system; and the need for increased resources for social and educational programs.

Section 5

Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination "in political, social, or economic life for any reason whatsoever"; however, violence and societal discrimination against women and ethnic minorities persisted.

Women

Violence against women continued to be a problem. Police statistics indicated that approximately 80,185 women were victims of domestic violence during 2003. Women's organizations asserted that the number of women suffering from domestic abuse was probably much higher because battered women usually refused to admit abuse even to themselves. Violence against women remained hidden, particularly in small towns and villages. Physical abuse is illegal and spousal rape is treated in the same manner as other types of rape.

Police intervened in cases of domestic violence. The police, in cooperation with the State Agency for Solving Alcoholic Problems, used the "blue card," a record-keeping system designed to document incidents of spousal abuse. However, the program had limited effect due to inadequate funding. Sentences for abuse of family members range from 3 months to 5 years, or from 2 to 10 years if the victim attempts suicide as a result of the abuse. Most convictions resulted in suspended sentences. There were 85,212 cases of family abuse reported in 2003. According to nongovernmental organizations (NGOs), courts often

treated domestic violence as a minor crime, pronouncing lenient verdicts or dismissing cases.

In 2003, 2,332 rape cases were reported. However, women often were unwilling to report the crime and NGOs estimated that the actual number was 10 times higher than reported.

NGOs operated a number of centers to assist victims, provide preventive treatment and counseling to perpetrators, and train personnel working with domestic violence victims. The Office of the Victims' Rights Spokesman at the Ministry of Internal Affairs and Administration was responsible for ensuring that violence victims were treated with respect by law enforcement and the judicial system. The Office provided legal and psychological assistance for victims and their families.

The law does not provide for restraining orders to protect battered women against further abuse. In divorce cases, courts frequently granted a divorce without providing for a property settlement, forcing women to return to abusive husbands. This problem was exacerbated by a lack of alternative housing. Women's advocacy groups complained there were too small a number of state-supported shelters for battered women.

Prostitution is legal; however, pimping for sexual activity is illegal. Due to a crackdown on prostitutes who worked along major thoroughfares and at truck stops, much of the prostitution industry moved to brothels, massage parlors, or agencies offering escort services. Police estimated that there were 7,000 prostitutes in the country. Of these, approximately 600 prostitutes worked on major thoroughfares and at truck stops.

Trafficking in women for the purposes of forced prostitution was a problem (see Section 5, Trafficking).

While there are no laws specifically addressing sexual harassment, social awareness of the problem continued to increase, and there are mechanisms available to deal with the problem. For example, the Criminal Code states that whoever takes advantage of a position of power in a relationship to gain sexual gratification may be sentenced to up to 3 years in prison. According to a Supreme Court advisory opinion, such a relationship can occur between employers and employees, supervisors and subordinates, or teachers and students; however, this provision can be invoked only when alleged sexual harassment occurs between a supervisor and an individual in a subordinate position.

The Constitution provides for equal rights regardless of gender and grants women equal rights with men in all areas of family, political, social, and economic life, including equal compensation for work of similar value. However, in practice, women frequently were paid less for equivalent work, mainly held lower-level positions, were fired more readily, and were less likely to be promoted than men. The government statistical bulletin indicated that at the end of the second quarter of the year men had a higher economic activity coefficient (62.1 percent) than women (47.4 percent) and that women seeking work were more likely to be unemployed. In October, 53.2 percent of all those unemployed were women, despite comprising a substantially smaller share of the population actively seeking work. Despite having a generally higher level of education, women earned on average 30 percent less than men. The labor code prohibits discrimination in hiring, and the employer has the burden of proof to show that discrimination did not occur. Women are prohibited from working underground (that is, in mining) or in jobs that require lifting of weights above a specified maximum. The prohibitions are binding on employers and do not permit exceptions even if requested by a female employee or with her consent. Additional restrictions apply to pregnant women. The Government maintained that its ratification of certain International Labor Organization conventions required these restrictions. Apart from the Constitution and the Labor Code (which prohibits any direct or indirect discrimination in employment against gender, age, disability, race, sexual orientation, nationality, ethnic origins, political and religious beliefs, and trade union membership status), no laws provide equal rights for women.

Women were employed in a wide variety of professions and occupations, and many held high positions in government and the private sector. In agriculture, women comprised 20 percent of all principal managers of farms. The pension law permits earlier retirement for women (age 60) than for men (age 65), with the practical effect that women received approximately 60 percent of the average pension received by men.

The Ombudsman for Human Rights monitored women's rights within the broader context of human rights; however, the broad scope of the office's mandate diluted its ability to function as an effective advocate of women's issues. The Government Plenipotentiary for Equal Status for Women and Men is charged with incorporating the principal of gender equality into governmental policy, including monitoring implementation of government programs aimed at achieving equal status.

There are several women's rights NGOs, including the Polish Foundation for Women and Family Planning and the Women's Rights Center, that were active advocates of gender equality and advanced their goals through research, monitoring, and publishing. There were also several church-sponsored women's advocacy organizations, but their cooperation with other women's NGOs was limited.

Children

The Constitution extends some state protection to the family and children, and there is a Sejm-appointed Ombudsman for Children's Rights. The Ombudsman--mandated to protect children from violence, cruelty, neglect, and other mistreatment--is the official point of contact for complaints about violations of human rights of children and submits requests to the appropriate law enforcement or other authorities for action. The Ombudsman submits an annual report to the Sejm on children's rights and may

suggest legislation to improve the human rights of children.

Education is universal and mandatory until age 18, and public schools are free. The Government sponsored some health programs targeted specifically at children, including a vaccination program and periodic checkups conducted in the schools; however, budget shortfalls prevented complete implementation of these programs.

Although child abuse occurred, there was no societal pattern of abuse. The law prohibits violence against children, and anyone who physically or psychologically abuses a juvenile may receive a prison sentence of 3 months to 5 years. The sentence is increased if the victim attempts suicide or the perpetrator acted with extreme cruelty. However, abuse was rarely reported, and convictions also were rare. Schools did not have procedures to protect children from abuse by teachers, and the teachers' work code provides legal immunity from prosecution for corporal punishment in the classroom.

Trafficking in children, primarily for the purpose of sexual exploitation, was a problem (see Section 5, Trafficking).

Trafficking in Persons

The law prohibits trafficking in persons; however, the country was a source, transit point, and destination for trafficked persons, primarily women and girls but also, to a lesser extent, boys.

Several Criminal Code provisions specifically address trafficking. The law prohibits trafficking in persons and pimping and imposes sentences of up to 10 years' imprisonment. It also prohibits recruiting or luring persons into prostitution; penalties for this offense are also up to 10 years. The most severe sentences are for individuals trafficking in children and luring women into prostitution abroad.

During the first 10 months of the year, there were 44 trafficking cases filed in the courts, compared with 16 in all of 2003.

Legal authorities dealt with child traffickers more severely than traffickers in adults, in part because laws on statutory rape were easier to prosecute. Authorities did not always recognize trafficked children because traffickers used false documents identifying them as adults. While prostituting a child is a crime, prostitution by adults is neither prohibited nor regulated by law, making it more difficult for police to pursue trafficking of adults.

The Ministry of Interior and Ministry of Justice have primary responsibility for anti-trafficking efforts, with the Ministry of Foreign Affairs engaged on bilateral and multilateral levels. There were 11 agencies involved in anti trafficking efforts. The Plenipotentiary for Equal Rights for Men and Women, who works out of the Prime Minister's office, was also involved in anti-trafficking programs.

The National Police participated in several bilateral task forces that shared information, tracked the movement of traffickers and victims across borders, and coordinated repatriations and casework. Although some of these task forces were dissolved in June, special teams in all 16 provinces continued to work on trafficking. In six provinces, there were special teams or individual workers at the county level monitoring trafficking. The National Police coordinated these efforts. There was close cooperation with Ukraine and Belarus.

Individuals were trafficked to and through the country, primarily from Ukraine, Bulgaria, Romania, Belarus, and Moldova. Individuals, including citizens, were trafficked to Western Europe, including Germany, Italy, Belgium, and the Netherlands. Some internal trafficking occurred. The extent of the problem was unclear, because statistics on prostitution did not distinguish trafficking victims from those willfully engaged in prostitution and other aspects of the sex trade. Of the estimated 7,000 prostitutes in the country, approximately 30 percent were estimated to be of foreign origin. The international NGO La Strada previously estimated that 60 percent of foreign women working as prostitutes in the country were trafficking victims. In addition, La Strada reports that up to 10,000 Polish women were trafficked out of the country annually. NGOs believed that the trafficking problem was likely much larger than reflected in the number of arrests and prosecutions.

Ukraine is the largest single source of foreign women trafficked into the country. Women from Bulgaria tended to be from the Turkish and Romani minorities. Women and girls who were trafficked were recruited from areas with low socioeconomic conditions, sometimes quite openly. Those from the lowest socioeconomic levels were most vulnerable to trafficking and subjected to the worst conditions. For example, Roma and ethnically Turkish Bulgarians tended to be forced into prostitution on highways, spending a few months in the country before being trafficked further west. In contrast, women from other East European countries were generally trafficked into agencies run as brothels. Educated Polish and Russian women were more likely than others to be employed voluntarily by escort services.

Traffickers attracted victims through methods including fake employment offers, arranged marriages, fraud, and coercive measures. Some victims believed that they were accepting employment as waitresses, maids, or nannies abroad. While en route to their purported destinations, traffickers took their passports and identity papers and exerted control over them through fear and intimidation. Traffickers threatened victims with violence, and those who resisted or tried to flee were raped, beaten, or intentionally injured.

In recent years, trafficking has become increasingly organized and has been associated with a rampant growth in document fraud. As many as 90 percent of those trafficked in the country had false travel documents, and the trafficking of a person usually involved a network of criminals. One criminal would recruit the victim; a second would provide false travel documents and traffic her across the border; and a third would supervise her work with clients, functioning as a pimp.

La Strada and police reported large-scale auctions of women in Warsaw and other cities. Prices for trafficked women and girls reportedly started at approximately \$2,000 (6,000 PLN). Victims usually were trafficked by nationals from the same source country. Foreign traffickers systematically paid a percentage of their receipts to local traffickers operating out of the same region of the country.

Trafficking victims often were afraid to turn to officials for help because border guards and police could potentially deport victims, if they were not identified as such, on immigration law violations. While the Government generally lacked resources to support victims financially, it cooperated extensively with NGOs, which provided a wide range of support services. The Government provided a public building to an NGO to use as a shelter for trafficking victims and gave another organization a grant to build a similar shelter. In January, La Strada opened a new shelter with funding from foreign governments to provide a safe place for up to 10 women and medical, psychological and legal assistance. Nonetheless, the number of shelters remained inadequate, and NGOs frequently resorted to ad hoc arrangements to shelter victims.

Numerous NGOs were involved in anti-trafficking initiatives and victim services. NGOs and educational institutions often worked closely with local authorities to identify trafficking victims and develop training programs for local authorities. These organizations provided a range of services, including victims' assistance hotlines, safe accommodation, therapy and psychological support, and contacts who could help victims with legal problems and reintegration into society.

Trafficking victims were not always identified as such and therefore were not always informed of their legal status or rights. In many cases, unrecognized victims were deported as soon as possible, preventing the Government from providing assistance, despite legal provisions allowing foreign victims with illegal status to remain in the country during the investigation and trial of their traffickers. Deported victims were sometimes met at the border by their traffickers, who provided them with new travel documents and returned them to the country. For example, police detained a Bulgarian woman on several occasions, each time with a new identity and passport. There was no specific assistance set aside for victims repatriated to Poland, although they were eligible for unemployment and welfare benefits. Poland cooperated fully with other countries in anti-trafficking efforts and the repatriation of victims.

La Strada conducted training courses at 6 police academies and border guard academies from June 2003 through February. The courses were designed to improve knowledge of the issue of trafficking in persons among students of both academies.

Persons with Disabilities

There was no official discrimination against persons with disabilities in employment, education, or in the provision of other state services; however, there were reports of some societal discrimination against persons with disabilities. There were approximately 5.5 million persons with disabilities in the country at year's end. In 2002, approximately 20 percent of persons with disabilities, but able to work, were unemployed, slightly higher than the national unemployment rate. No updates of that figure are available, and advocacy groups claimed that the rate was much higher. The law allows individuals with certain disabilities to work without losing their disability benefits. Approximately 50 percent of persons with disabilities had no more than an elementary education, compared with 33 percent of those without disabilities, and only 5 percent had a university education, compared with 11 percent of persons without disabilities.

The law mandates access to buildings for persons with disabilities; however, public buildings and transportation generally were not accessible to persons with disabilities. Implementation fell short of rights set forth in the legislation, since the law provides only that buildings "should be accessible." There is no legal obligation to adapt existing objects or facilities to the needs of persons with disabilities and efforts to make improvements in this area have been hampered by lack of funding.

The first deputy minister in the Ministry of Social Policy is responsible for disability-related issues. He supervises the State Fund for Rehabilitation of the Disabled, and is advised by the National Consultation Council for the Disabled. During the year, a number of laws were passed to support increased employment opportunity and training for disabled persons. New laws aimed to more clearly defining the role of government institutions in vocational and social rehabilitation, with the goal of ensuring effective use of public and assistance funds. Laws implementing these programs are scheduled to enter into effect during the first quarter of 2005.

National/Racial/Ethnic Minorities

There were occasional incidents of skinheads clashing with Roma and racially motivated violence directed at Roma. Individuals of African, Asian, or Arab descent also reported isolated incidents of verbal, physical, and other types of abuse. The small Ukrainian and Belarusian minorities occasionally experienced petty harassment and discrimination.

Societal discrimination against Roma was common, and some local officials discriminated against Roma in the provision of social services. According to its leaders, Roma faced disproportionately high unemployment and were hit harder by economic

changes and restructuring than were ethnic Poles. Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education.

Under the "Program for the Romani Community in Poland," adopted in August 2003 and launched this year, the Government aimed to foster greater participation and integration of the Romani community into society by funding and commencing housing development and rehabilitation projects in 14 of 16 Polish provinces, providing additional education resources (including Roma assistants) in local schools, conducting job training and small business seminars, creating additional medical, social and recreational facilities for Roma and promoting public awareness of the importance of Romani culture, among other initiatives. Total expenditures in 2004 amounted to approximately \$1.58 million (4.75 million PLN).

The law provides for the educational rights of ethnic minorities, including the right to be taught in their own language. There were an estimated 50,000 Lithuanians in the country, and their minority rights, including language instruction, were addressed routinely during governmental talks. There were 31 Lithuanian-language textbooks in use during the year at different education levels, including textbooks on mathematics, physics, and geography financed by the Government.

The German minority in Opole Province makes up one-third of the area's 1 million inhabitants. Some community members continued to complain of inadequate use of German in the province's schools. In February, the ECHR upheld the Government's 2001 rejection of the application for official minority status by the 170,000-member Silesian community.

Members of the Ukrainian minority were represented in local governments, particularly in Warminsko-Mazurkie Province, where the head of the provincial parliament was an ethnic Ukrainian. Statistical data indicated that the number of Ukrainian minority schools and school children increased over the past decade. The Ukrainian language was taught in 136 schools for 2,774 pupils nationally.

Other Societal Discrimination and Abuses

Homosexuality is not criminalized; however, polls indicated that most Poles did not discuss the issue publicly. In May, right-wing groups and football hooligans armed with eggs and stones attacked a gay rights demonstration in Krakow. Police moved to protect the group, but the counter-protesters attacked the police. The mayor of Warsaw stated that this violence contributed to his decision to deny approval of a gay rights parade in Warsaw in June, organized by the International Gay and Lesbian Association. Gay rights activists held a peaceful rally on the day following the date the parade was to have taken place. Counterdemonstrators picketed the rally, including members of the ultraconservative All Poland's Youth Association, which had been associated with violent incidents in the past. However, there were no reported incidents of violence at the rally.

In November, several organizations and political parties, including Lambda, the Green Party and the New Left, organized a March of Equality in Poznan on International Tolerance Day. Despite protests from conservative parties, Church authorities and associations, city authorities granted permission for the march. The march was provided with a police escort but was blocked by soccer hooligans and members of All Poland's Youth. These groups attempted to break the police cordon and attack the marchers but were thwarted by the police escort. Following the attempted disruption, the police and organizers agreed to change from a march format to a rally. Opponents threw eggs and lemons and verbally abused the rally participants. Police detained or arrested a number of counterdemonstrators.

A Polish Radio poll found 49 percent opposed public demonstrations for gay rights. Television stations in Wroclaw and Lodz aired anti-gay commercials sponsored by the fascist political organization Narodowe Odrodzenia Polski.

Section 6 Worker Rights

a. The Right of Association

The law provides that all workers, including civilian employees of the armed forces, police, and frontier guards, have the right to establish and join trade unions of their choosing, and workers exercised these rights. There is no precise data on work force unionization; according to press reports, 14 percent of the workforce were union members. As a rule, newly established small and medium-sized firms were nonunion, while union activity in most cases carried over into privatized (former state-owned) enterprises.

The law sets minimum size requirements for establishing a trade union: 10 persons may form a local union, and 30 may establish a national union. Unions, including interbranch national unions and national interbranch federations, must be registered with the courts. A court decision refusing registration may be taken to an appeals court. The law does not give trade unions the freedom to exercise their right to organize all workers. For example, workers on individual contracts cannot form or join a trade union. In state-owned enterprises, such as the health sector, water and forestry, there were cases in which workers had their normal employment contract terminated and replaced by an individual contract that took away rights they formerly enjoyed as permanent employees.

The law prohibits antiunion discrimination; however, labor leaders reported that employers discriminated against workers who

attempted to organize or join unions, particularly in the growing private sector. The law also did not prevent employer harassment of union members for trade union activity; there were unconfirmed reports that some employers sanctioned employees who tried to set up unions.

In April, the Government amended the law on road traffic in a manner that labor organizers feared might restrict legal demonstrations and rallies. The changes were reviewed by the Constitutional Court, which ruled in November that certain clauses were unconstitutional. Trade union officials indicated that the law has impeded their ability to organize demonstrations and marches, but not to the extent they had originally feared.

b. The Right to Organize and Bargain Collectively

The law provides for and protects enterprise-level collective bargaining over wages and working conditions. The Tripartite Commission (unions, employers, and the Government) was the main forum that determined national-level wage and benefit increases in sensitive areas, such as the so-called budget sector (health, education, and public employees). In December 2003, the Commission ended a lengthy period of negotiations over a wide-ranging "social agreement" originally proposed by the Government. While no overall agreement was reached, the parties reached consensus on a number of legislative measures. The Commission continued to serve as an important forum for the social partners to discuss differences and grievances and often to negotiate before problems erupted into conflict.

The law does not require verification of union membership in order for unions to be considered "representative" negotiating partners for management and government. Many disputes arose because of the weakness of the employer side of the union/employer/government triangle. Key state sector employers (largely in heavy industry and the budget sector) remained unable to negotiate with labor without the extensive involvement of the ministries to which they are subordinate, thereby complicating and politicizing the Government's labor relations. The law provides for parties to take disputes first to labor courts, then to the prosecutor general, and, as a last resort, to the Supreme Court.

Unions have the right to strike except in "essential services"--uniformed services, state administration, and local government--where they only have the right to protest. A majority of strikes were technically illegal because one or both of the sides did not follow each step exactly as required by law. Labor courts acted slowly on deciding the legality of strikes, while sanctions against unions for calling illegal strikes, or against employers for provoking them, were minimal. Arbitration is not obligatory and depends on the agreement of disputing parties. Unions alleged that laws prohibiting retribution against strikers were not enforced consistently and that fines imposed as punishment were so minimal that they were ineffective deterrents to illegal activity. Workers who strike in accordance with the law retain their right to social insurance but not to pay. However, if a court rules a strike illegal, workers may lose social benefits, and organizers are liable for damages and may face civil charges and fines.

During the year, several strikes took place. Most strikes ended within a few hours, including those at the Budryk coal mine in Ornowice, the Polish telecommunications company TPSA office in Katowice and the blockage of tracks by employees of the Polish State Railways in Gdynia. More serious strikes, led in large part by the Solidarity Trade Union, occurred in the PKS bus company in Kozenice and the Wroclaw construction company Jedylnka. In January, workers at Jedylnka began an occupation strike to demand payment of back wages. The company fired 136 striking workers and in March removed them by force from company premises. A court later declared that the workers had been illegally fired, and ordered one employee rehired, and awarded monetary damages to the others. In Kozenice, a 3-month strike took place to protest against the firing of a Solidarity shop steward. In November, a court ruled that strike to have been legal.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, there were reports of child labor and trafficking in adults and children for labor (see Sections 5 and 6.d.).

d. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits the employment of persons under the age of 15. Persons between the ages of 15 and 18 may be employed only if they have completed primary school and the proposed employment constitutes vocational training and is not harmful to their health.

The State Labor Inspectorate (PIP) reported that increasing numbers of minors worked and that many employers violated labor rules by underpaying them or paying them late. Inspectors found violations in restaurants, stud farms, and, in some instances, small private businesses and factories. Sanctions for the illegal employment of children range from warning letters to orders to cease employing underage children. The police may enforce such orders by demanding the transfer of underage employees, closing all or part of the workplace, or, working through the Ministry of Labor, imposing fines ranging from approximately \$7 to \$167 (20 to 500 PLN) per offense. Cases may also be referred to an administrative tribunal, which can levy fines of up to \$1,667 (5,000 PLN). Jail sentences may be imposed for serious infractions; such cases generally involve serious injury or death.

During the year, PIP conducted 580 investigations involving almost 3,000 possible underage employees. In 2003, fines were levied in 428 cases, amounting to approximately \$26,000 (78,000 PLN). That figure was estimated to remain the same this year.

e. Acceptable Conditions of Work

The Ministry of Labor, the unions, and employers' organizations negotiate a revised national minimum wage every 3 months. The national minimum monthly wage was approximately \$275 (824 PLN); it did not provide a decent standard of living for a worker and family. A large percentage of construction workers and seasonal agricultural laborers from the former Soviet Union earned less than the minimum wage. The large size of the informal economy and the small number of government labor inspectors made enforcement of the minimum wage very difficult. With unemployment high, workers often agreed to inferior working conditions and lower pay to find or keep jobs.

The standard legal workweek is 40 hours. The law requires overtime payment for hours in excess of the standard workweek, but there were reports that this regulation was often ignored.

The Labor Code defines strict and extensive minimum conditions for the protection of workers' health and safety; however, enforcement was a major problem because the PIP was unable to monitor workplaces sufficiently. In 85,440 work-related accidents reported during 2003, 522 individuals were killed and 1,005 seriously injured. During the first 9 months of the year, 311 workers were killed and 608 were seriously injured in a total of 57,489 workplace accidents. The Government reported that while most accidents were in the public sector, most serious accidents occurred in the private sector, where proportionally more deaths also occurred. Employers routinely exceeded standards for exposure to chemicals, dust, and noise. In addition, it was unclear which government body had responsibility for enforcing the law. The PIP may shut down workplaces where it finds unsafe conditions. Workers may remove themselves from dangerous working conditions without losing their jobs, but there were reports that fears of employment loss prompted workers to remain on the job.